

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

In re:)
) Case No. 20-50463
CUSTOM DESIGN GROUP, LLC,)
) Chapter 11, Subchapter V
)
Debtor.)

MOTION TO CONVERT OR DISMISS CASE

The Office of the Bankruptcy Administrator for the Western District of North Carolina (“Bankruptcy Administrator”) moves the Court (the “Motion”) for an order converting or dismissing the above-captioned bankruptcy case pursuant to section 1112 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9014 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”). In support of this Motion, the Bankruptcy Administrator says as follows:

FACTUAL BACKGROUND

1. The above-captioned debtor and debtor-in-possession (the “Debtor”) filed a voluntary petition for relief under subchapter V of chapter 11 of the Bankruptcy Code [ECF No. 1] on December 11, 2020 (the “Petition Date”).
2. On December 14, 2020, the Chapter 11 Operating Order (the “Operating Order”) was entered in this case [ECF No. 3]. That Order provided, in part, that the Debtor file monthly status reports.

3. The following monthly status reports are due and unfiled:

Month	Due Date
March 2021	4/21/21
April 2021	5/21/21
May 2021	6/21/21
June 2021	7/21/21

RELIEF REQUESTED

4. The Bankruptcy Administrator requests entry of an order dismissing this bankruptcy case, or, if in the best interest of creditors, converting this chapter 11 case to a liquidation under chapter 7 pursuant to section 1112(b)(1) of the Bankruptcy Code.

BASIS FOR RELIEF REQUESTED

5. Section 1112(b)(1) of the Bankruptcy Code states:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate for cause

11 U.S.C. § 1112(b)(1).

6. Cause includes unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter.

11 U.S.C. § 1112(b)(4)(F).

7. Section 308 of the Bankruptcy Code requires:

A debtor in a small business case shall file periodic financial and other reports containing information including –

- (1) the debtor's profitability;
- (2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;
- (3) comparisons of actual cash receipts and disbursements with projections in prior reports;
- (4) whether the debtor is –

- (A) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedures; and
- (B) timely filing tax returns and other required government filings and paying taxes and other administrative expenses when due; . . .

11 U.S.C. § 308(b). Section 1187(b) of the Bankruptcy Code makes clear the requirements of section 308 apply to debtors electing subchapter V. 11 U.S.C. § 1187(b).

8. The undersigned is unaware of any unusual circumstances that establish that dismissal or conversion is not in the best interests of creditors. Therefore, section 1112(b) requires conversion or dismissal, whichever is in the best interest of the creditors and the estate.

9. Courts have looked to multiple factors to determine whether conversion or dismissal is in the best interest of the creditors and the estate. Collier identifies ten such factors:

- (1) whether some creditors received preferential payments, and whether equality of distribution would be better served by conversion rather than dismissal, (2) whether there would be a loss of rights granted in the case if it were dismissed rather than converted, (3) whether the debtor would simply file a further case upon dismissal, (4) the ability of the trustee in a chapter 7 case to reach assets for the benefit of creditors, (5) in assessing the interest of the estate, whether conversion or dismissal of the estate would maximize the estate's value as an economic enterprise, (6) whether any remaining issues would be better resolved outside the bankruptcy forum, (7) whether the estate consists of a "single asset," (8) whether the debtor had engaged in misconduct and whether creditors are in need of a chapter 7 case to protect their interests, (9) whether a plan has been confirmed and whether any property remains in the estate to be administered and (10) whether the appointment of a trustee is desirable to supervise the estate and address possible environmental and safety concerns.

7 COLLIER ON BANKRUPTCY P 1112.04 (16th 2021).

10. The liquidation analysis attached to the Plan [ECF No. 104] suggests that creditors would receive no recovery in a chapter 7 liquidation. In light of the lack of assets

available to be administered for the benefit of creditors, the undersigned requests that the case be dismissed.

Wherefore, the undersigned moves the Court to dismiss this case or, if the Court determines it would be in the best interests of the creditors, to convert the case to a chapter 7 liquidation and for such other and further relief as it just and proper.

Dated: July 27, 2021.

/s/ Shelley K. Abel
Shelley K. Abel
U.S. Bankruptcy Administrator
402 W. Trade Street, Suite 200
Charlotte, NC 28202-1669
N.C. Bar #34370
Telephone: (704) 350-7587 Fax: (704) 344-6666
Email: shelley_abel@ncwba.uscourts.gov

CERTIFICATE OF SERVICE

The undersigned certifies that the pleading(s) or paper(s) to which this Certificate is affixed was served upon the party(s) to this action listed below by depositing a copy of the same, enclosed in a first-class postage paid, properly addressed wrapper, in a Post Office or official depository under the exclusive care and custody of the United States Postal Service and/or by means of the Electronic Filing System of the Bankruptcy Court on July 27, 2021.

Custom Design Group, LLC
391 10th Avenue Dr. NE
Hickory, NC 28602

James H. Henderson
- *Served electronically*

Michael Bowers
- *Served electronically*

Dated: July 27, 2021.

/s/ Shelley K. Abel
Shelley K. Abel
U.S. Bankruptcy Administrator
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Charlotte, NC 28202-1669
N.C. Bar #34370
Telephone: (704) 350-7587 Fax: (704) 344-6666
Email: shelley_abel@ncwba.uscourts.gov